Caseload and Challenges

Caseload

5.1 Caseload for the year was as follows :

– 12,552 enquiries received;

– 4,661 complaints received; and

– 4,345 complaints concluded.

The community's pre-occupation with SARS in 2003 did not stem the flow of in-coming complaints in the year. However, SARS did cause a number of Government departments and organisations, notably the Hospital Authority, delay in responding to our investigations.

Fig. 5.1

Enquiries and Complaints since 1999/2000

Year	Enquiries	Complaints	
		Received	Concluded
1999/2000	9,323	3,101	3,411
2000/01	11,821	3,709	3,476
2001/02 (10 1/2 months*)	12,900	3,736	3,790
2002/03	14,298	4,382	4,370
2003/04	12,552	4,661	4,345

* From 2001/02, the reporting year ends on 31 March to coincide with the end of financial year.

Performance Pledges

5.2 Our performance pledges are set out below :

Fig. 5.2

Performance Pledges

Enquiries	**Range in Response Time (depending on complexity)**
By telephone or in person	Immediate - 30 minutes
In writing	5 - 10 working days
Complaints	**Range in Response Time (depending on complexity)**
Initial assessment and acknowledgement	All complaints will be initially screened and acknowledged – 5 - 10 working days
Cases concluded	Acknowledgment with a full reply declining investigation will be sent –
– Cases outside jurisdiction or under restriction	10 - 15 working days
– Other cases	3 - 6 months
Group Visits and Talks	**Response Time**
Requests for guided group visits	Within 5 working days
Requests for outreach talks	Within 10 working days

The Ombudsman 申訴專員

The volume of complaints received has kept the pressure on our investigation teams. However, we have endeavoured to complete cases within the pledges. The number of cases not meeting the performance pledges during the reporting period was 78 (or 3.18%), compared to 75 (or 2.84%) for the previous reporting year. Factors contributing to longer processing time included :

(a) highly complex cases necessitating more extensive search and elaborate investigation process;

(b) voluminous documents requiring extra time to distill relevant information;

(c) emergence of new developments mid-stream;

(d) suspension of investigation as the cases become subject to court or law enforcement action;

(e) argument and challenges, as described in the following paragraphs; and

(f) SARS caused some organisations to delay response to our inquiries (see **para 5.1**.)

Fig. 5.3

	Response Time		
Initial Assessment and Acknowledgement	Within 5 working days	Within 6-10 working days	More than 10 working days
1999/2000 (16.5.1999 – 15.5.2000)	99.86%	0.14%	0
2000/01 (16.5.2000 – 15.5.2001)	100.00%	0	0
2001/02	92.65%	5.85%	1.50%
2002/03	77.58%	11.84%	10.58%
2003/04	66.20%	30.74%	3.06%

	Cases Outside Jurisdiction or Under Restriction			**Cases for Investigation**		
Processing of Complaint	Within 10 working days	Within 11-15 working days	More than 15 working days	Less than 3 months	Within 3-6 months	More than 6 months
1999/2000 (16.5.1999-15.5.2000)	93.14%	4.54%	2.32%	45.00%	45.40%	9.60%
2000/01 (16.5.2000-15.5.2001)	80.80%	18.60%	0.60%	50.60%	44.00%	5.40%
2001/02	58.90%	37.60%	3.50%	52.20%	38.50%	9.30%
2002/03	60.65%	37.11%	2.24%	57.52%	39.64%	2.84%
2003/04	71.51%	22.10%	6.39%	51.08%	45.74%	3.18%

Argument and Challenges

5.3 Occasionally, organisations and complainants challenge our decisions or actions. Such argument and exchange inevitably result in longer time in processing cases.

Jurisdiction

5.4 Organisations at times challenge the propriety of our inquiries, particularly where the issues seem to impact on restrictions in Schedule 2 to The Ombudsman Ordinance, e.g. personnel or contractual matters. We are ever mindful to stay within our purview and would examine only such administrative aspects as delays and inefficiencies in such borderline cases. By this prudent but liberal approach, I hope to maximise our contribution to open government and client-oriented services.

5.5 In a case alleging delay by the Civil Service Bureau in a discipline matter, I was aware of the restriction upon me not to investigate personnel matters. However, in the face of the allegation of inordinate delay over years, I regarded that as possibly a matter of procedural inefficiency and lack of consideration for the complainants : in short, matters within my jurisdiction. Legal advice then confirmed that the present provision of the Ordinance precludes my acting at all, even on delay in personnel matters. I will, of course, abide by the law but keep an open mind as to whether such provision is unnecessarily restrictive, and may be contrary to the spirit of natural justice.

5.6 On the other hand, complainants sometimes question my decision to screen out their cases as falling outside our jurisdiction. They feel aggrieved by “self-evident” injustice to them, prolonged delay in redress of their concern. They could not accept, or understand, why The Ombudsman cannot even examine their case. To ease matters somewhat, where practicable, we redirect them to the appropriate authorities or avenues for advice, assistance or redress.

Secrecy vs Data Privacy in Evidence Collection

5.7 In the course of our inquiries, a few organisations were reluctant and dilatory in providing material for our scrutiny, on grounds of secrecy or data privacy, despite our statutory power to access any information relevant to a case. However, I am grateful that the organisations generally cooperate with my Office, although occasionally with some persuasion. I have also not had to summon unwilling witnesses during the reporting period but in one or two cases, we had to explain my powers to the individuals concerned before they would cooperate.

5.8 As explained in **Chapter 2**, the secrecy code in the Ordinance is the cornerstone of the ombudsman system and it enables us to obtain crucial information for effective investigation into allegations of maladministration. In the year under report, a complainant filed a request for access to copies of personal data documents we had collected from a Government department during our investigation of his complaint. I declined the request on the basis that I had already disclosed all information I deemed necessary and the rest was subject to the secrecy code under section 15 of The Ombudsman Ordinance. The Privacy

Commissioner for Personal Data, however, took the view that, because our secrecy code is not specifically referred to in the Personal Data (Privacy) Ordinance (PDPO), it is insufficient by itself as a ground for refusing such a request. However, the Privacy Commissioner accepts that documents covered by our secrecy code may be personal data exempted under section 58(1)(d) of the PDPO and hence that their access may be refused.

5.9 While the specific issue was resolved, I consider that the underlying conflict between PDPO and The Ombudsman Ordinance needs further examination.

Decisions

5.10 For full investigations, I inform the organisations concerned, normally in the form of draft reports, of any criticism or adverse comments against them or their staff. Now and then, organisations raise reservations or even objections to our observations, especially when the complaints are substantiated. Page after page of contentions and counter-points, followed by lengthy hearings, are common fare for my investigation officers. We endeavour to provide ample opportunities for organisations and their officers to make representations, which we carefully examine before finalising our conclusions. Where their representations are reasonable, we incorporate into the final report. Where they cannot be accepted, we still record their comments with our reasons for non-acceptance.

Lack of Response

5.11 Virtually all organisations invariably take our investigation reports seriously and, as noted above, provide substantial comments on our draft investigation reports when they do not agree with our findings or recommendations. Regrettably, this reporting year saw the first ever case in our history where we had to issue our final investigation report with no comment from the department concerned. This was the Lands Department (Lands D), which just failed to comment despite repeated reminders and a generous extended response period of almost three months. In the event, I decided to issue the final report lest it would be grossly unfair to the complainant. Such blatant lack of cooperation from a Government department suggests to us some deeper problem with its organisational culture. In this connection, I have addressed the Director of Lands.

Revived Cases

5.12 From time to time, complainants are dissatisfied with our investigation results, particularly if their complaints are found to be unsubstantiated. In their disappointment, some request for review of their cases. A few have raised allegations against individual investigation officer for being biased, incomplete or incompetent. As all investigation reports are subject to my personal scrutiny and approval, such allegations can be seen as complaints against my decisions, not my officers.

5.13 Factors prompting complainants to seek review may be summarised as follows :

(a) rising expectations of our community for service;

(b) intuitive conviction over their own view of matters;

(c) expectation of The Ombudsman being advocate for complainants only; and

(d) desire for putting pressure on the organisations concerned.

5.14 We treat each and every objection as an appeal. We review the case for any fresh evidence or new angle. We endeavour to address all specific points in our response. Where new information comes to light, we re-open investigation. Special procedures apply in the handling of revived cases. Whilst the original investigation officer will be required to comment on the complainant's grounds for review, the actual review will be carried out by another investigation officer or by the Chief Investigation Officer. As a rule, draft replies to requests for review must be vetted by my Deputy before coming to me for final scrutiny and decision.

5.15 In the reporting period, we received 359 requests for review, compared to 280 in the last reporting period. The increase of 28.2% might reflect our complainants being more aware of the option to seek review of their cases. Most complainants simply reiterated their arguments and expressed dissatisfaction with our conclusions. However, where they produced new materials or perspectives, we studied afresh and were ready to revise our original decision. In the report period, 14 (or 3.9%) out of 359 cases reviewed resulted in revision of the decision.

Fig. 5.4

Revived Cases

Reason / Result	New Evidence		New Perspective		Outside Jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	2	–	12	–	–	14
Decision upheld	–	306	–	–	39	345
						359

5.16 A number of persistent complainants have chosen to vent their discontent through a continuous stream of letters or by numerous daily telephone calls to my staff at different ranks. We understand, and we can sympathise, with their sentiments. However, our primary duty is to ensure fairness to both the complainants and the organisations concerned. This is the spirit of the Ordinance and the intent of our institution. It does not accord with justice or use public resources properly

to engage in endless debate over the same points day after day. We will review only on the basis of new evidence or fresh arguments. We cannot respond indefinitely to repeated requests for review.

Overview

5.17 In general, we regard challenge of our views or conclusions as a healthy reminder to sharpen our vigilance and to enhance our professionalism. We endeavour to ensure that our investigations are thorough and impartial. We are ready to take a further look at objective facts from different angles. However, we do not bow to pressure, submit to irrationality or aid and abet in personal vendetta.